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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Sunrise MFG., Inc.

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Serial No. 75/691,990

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Bernhard Kreten, Esq. for Sunrise MFG., Inc.

Susan C. Hayash, Trademark Examining Attorney, Law Office  
110 (Chris A.F. Pedersen, Managing Attorney).

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Before Quinn, Hairston and Drost, Administrative Trademark  
Judges.

Opinion by Drost, Administrative Trademark Judge:

Sunrise MFG., Inc. (applicant) filed a trademark  
application to register the mark AIR SAK (in typed form) on  
the Principal Register for goods ultimately identified as  
"dunnage devices, namely, devices formed from reinforced

paper with reinforced pneumatically expansible bladders to prevent load shifting" in International Class 16.<sup>1</sup>

The examining attorney<sup>2</sup> ultimately refused to register the mark on the ground that the mark, when applied to the goods, is merely descriptive. 15 U.S.C. § 1052(e)(1). After the examining attorney made the refusal final, this appeal followed.

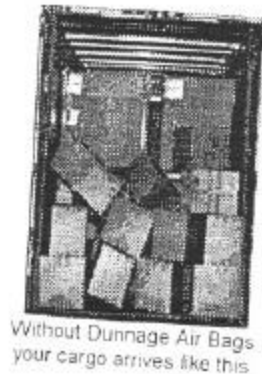
The examining attorney's position is that the mark AIR SAK is merely descriptive for applicant's goods, which are "dunnage devices." These goods "are used to restrain movement of cargo loads in trucks, overseas containers, or railcars. They fill voids, brace loads, absorb vibrations, and protect cargo from in-transit damage." [www.litco.com](http://www.litco.com).<sup>3</sup> Dunnage devices are used to fill voids in shipping compartments to avoid damage to goods in transit. The picture below on the right demonstrates a dunnage device in use.

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<sup>1</sup> Serial No. 75/691,990, filed April 26, 1999. The application is based on applicant's allegation of a bona fide intention to use the mark in commerce.

<sup>2</sup> The current examining attorney was not the original examining attorney in this case.

<sup>3</sup> In response to a requirement for additional information, 37 CFR § 2.61(b), applicant referred to this website information and incorporated "the LITCO functional description by reference." Brief at 9.



The examining attorney relies on several dictionary definitions<sup>4</sup> to support her position that the terms "air" and "sak/sack" are descriptive of applicant's goods.<sup>5</sup>

"Air - A colorless, odorless, tasteless, gaseous mixture, namely nitrogen (approximately 78 percent) and oxygen (approximately 21 percent) with lesser amounts of argon, carbon dioxide, hydrogen, neon, helium, and other gases."

"Sack" - A large bag of strong course material for holding objects in bulk; A similar container of paper or plastic."

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<sup>4</sup> We take judicial notice of these definitions. University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., 213 USPQ 594, 596 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

<sup>5</sup> Definitions from *American Heritage Dictionary of the English Language*, Fourth Edition (2000).

"Bag - A container of flexible material, such as paper, plastic, or leather that is used for carrying or storing items."

"Dunnage - Loose packing material used to protect a ship's cargo from damage during transport."

The examiner attorney also provided thesaurus entries that show that "sack" and "bag" are synonyms. *Merriam-Webster's Collegiate Thesaurus* (1988). Furthermore, the examining attorney "noted that the word SAK, as used by the applicant, is the phonetic equivalent of the properly spelled SACK." Brief at 4, n. 3. As a result of this evidence, the examining attorney found that "'AIR SAK' means a bag that contains air, or, as used in the dunnage industry an AIR BAG, with no separate, nondescriptive meaning." Brief at 4 (footnote omitted).

The examining attorney also relied on NEXIS and Internet printouts that showed that the term AIR BAG "is a term of art used by the dunnage bag manufacturing industry to describe dunnage, or void, fillers that are used to prevent shifting of goods during transport." Brief at 6.

The examining attorney concludes that the "applicant's dunnage bags are merely a large bag, or SACK, filled with AIR, that are used to prevent goods from moving during shipping. The applicant's mark is the equivalent of the

term AIR BAG, which is widely used in the dunnage bag manufacturing community, and is, therefore, merely descriptive of the applicant's goods." Brief at 9.

Applicant, on the other hand, argues that AIR SAK is not a term of art and that "[s]ome thought process or prior knowledge would be required to arrive at the conclusion of the goods under the mark." Brief at 7. In addition, applicant notes that "airsac" is defined as "one of the air filled spaces in the body of a bird connected with the air passage of the lungs" and "a thin-walled dilation of a tracheas occurring in many insects." Brief at 3. Therefore, applicant maintains that "[s]imply because the goods are 'expansible' dunnage devices, does not ineluctably lead to the conclusion that the mark is merely descriptive." Id.

We affirm the examining attorney's refusal to register applicant's mark for the identified goods.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir.

2001). Courts have long held that to be "merely descriptive," a term need only describe a single significant quality or property of the goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 200 USPQ at 218.

We begin by discussing the goods identified as "dunnage devices." "Dunnage" is defined as "loose packing material used to protect a ship's cargo from damage during transport." Various devices are used to protect cargo during transport "including corrugated void fillers, honeycomb panels, bulkhead systems and other protective dunnage products that block and brace your shipments and prevent damage." [www.greif.com](http://www.greif.com). See also [www.sunrisemfg.com](http://www.sunrisemfg.com) ("Your premier supplier of dunnage materials including Void Fillers, Dunnage Air Bags, Bulkheads, Saddle Pak, Match Book and Wood-Pak"). We agree with the examining attorney that, as shown below, the term "air bag" is a term of art in the dunnage or cargo protection industry.

Air Bags are the most efficient load bracing system available. Constructed of paper and an inner polyethylene bladder, they cradle and cushion cargo loads to help reduce product damage, labor costs and loading time.

[www.itwangleboard.com](http://www.itwangleboard.com).

Shippers' air bags are the most efficient bracing and cushioning product available to protect your shipments. Air has proven to be the best cushioning, from tires to trains...shoes to shocks.

[www.itwshippers.com](http://www.itwshippers.com)

Dunnage Air Bags represent a less expensive means of blocking and bracing than the use of lumber and nails or expensive rubber bags.

[www.litco.com](http://www.litco.com)

Question: What type of Dunnage Air Bag is recommended for truck shipment?

Answer: 2 ply bags.

[www.dwpworks.com](http://www.dwpworks.com)

It's been one year since I first saw the vinyl dunnage air bag.

[www.centerload.com](http://www.centerload.com).

Traditionally, intermodal loads have been secured by inflatable dunnage material known as air bags, tying down the freight or nailing wooden planks into the floor and sides of the trailer.

Journal of Commerce, July 25, 1993.

The only question now is whether applicant's term AIR SAK would describe these same products. We agree with the examining attorney's finding that "sak" is the phonetic equivalent of "sack." See American Heritage Dictionary of the English Language ("sack" pronounced "sak"). See also In re Bailey Meter Co., 131 USPQ 51, 51 (TTAB 1961)

("'[S]ac' according to Webster's New International

Dictionary, Second Edition, 1947, is derived from the Latin word "saccus" meaning "a sack"; and, moreover, it is a phonetic equivalent of the word 'sack'"). The examining attorney has also submitted evidence that establishes that "bag" and "sack" are synonyms. However, merely because two terms are synonyms, this does not necessarily demonstrate that the substitution of one synonym for another results in the mark in its entirety being merely descriptive. It is possible that the synonym may have a different impression when combined with the other elements of the mark. In this case, we cannot ascertain any significantly different impression created by the terms AIR BAG and AIR SAK. Air bags are literally "bags of air" because "[a]ir has been proven to be the best when it comes to cushioning." [www.itwshippers.com](http://www.itwshippers.com). Using the synonym for bag, i.e., sak or sack, does not change this generic term into a suggestive trademark. The word sack/sak in this term would have its ordinary meaning of "a container of paper or plastic." Applicant's dictionary definition of "airsac" as referring to parts of birds and insects would have no relevance to the shipping and cargo industry where "air bag" is a recognized term. Bailey Meter, 131 USPQ at 51 ("While the terms "SAC" and "INK SAC" may, as pointed out by applicant, have specific



meanings in the fields of botany, anatomy, and zoology, ... [i]t is apparent that the notation "INK SAC" would have no botanical, anatomical, or zoological significance as applied to ink filled dispensing containers for a receiver-recorder device").

Unlike the cases applicant cites, here there is nothing left to the imagination when the mark is viewed in relation to the goods. See, e.g. W.G. Reardon Laboratories, Inc. v. B & B Exterminators, Inc., 71 F.2d 515, 22 USPQ 22, 24 (4<sup>th</sup> Cir. 1934) ("The words [MOUSE SEED for rat poison] used together possess an element of incongruity which make them unusual and unique"). There is nothing incongruous, unique, or unusual about substituting the term "sak" for "bag." Dunnage devices, such as applicant's, are bags or sacks of air used to cushion cargo in shipping. Based on this record, we conclude that applicant's mark would be merely descriptive of its dunnage devices because it describes the fact that applicant's dunnage devices are sacks or bags of air used to protect cargo during shipping.

Decision: The examining attorney's refusal to register the term AIR SAK on the ground that the mark would be merely descriptive of the involved goods is affirmed.